

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs January 14, 2010

IN RE D.L.D., JR., ET AL.

Appeal from the Juvenile Court for Knox County
No. 76387 Timothy E. Irwin, Judge

No. E2009-00706-COA-R3-JV - FILED FEBRUARY 24, 2010

This is a dependent and neglect proceeding. The trial court found and held that the children and stepchildren (“the subject children”) of D.L.D., Sr. (“the Adult”) are dependent and neglected within the meaning of Tenn. Code Ann. § 37-1-102(b)(12) (Supp. 2009). As one of its decrees, the trial court ordered that the Adult was to have no contact of any kind with the subject children. The Adult filed a petition against the Tennessee Department of Children Services seeking to be relieved of the court’s “no contact” order. The trial court denied the Adult’s petition. The case was appealed to the Court of Appeals. We have no jurisdiction of this appeal. Such appeals are to circuit court. *See* Tenn. Code Ann. § 37-1-159(a) (2005). This appeal is transferred to the Fourth Circuit Court for Knox County pursuant to Tenn. Code Ann. § 16-4-108(a)(2) (2009) and Tenn. R. App. P. 17.

**Tenn. Code Ann. § 37-1-159(a) Appeal as of Right; Case
Transferred to the Circuit Court for Knox County**

CHARLES D. SUSANO, JR., J., delivered the opinion of the Court, in which D. MICHAEL SWINEY and JOHN W. MCCLARTY, JJ., joined.

D.L.D. Sr., Nashville, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; and Jill Z. Grim, Assistant Attorney General, General Civil Division, Nashville, Tennessee, for appellee, Tennessee Department of Children’s Services.

OPINION

By order entered July 9, 2009, the trial court “confirm[ed] in its entirety” an earlier order of the court’s referee, which earlier order provides, in relevant part, that

[D.L.D., Sr.] [will] have absolutely no contact whatsoever with [the subject children] including no personal contact, no telephone calls, no electronic or written messages and no messages through third parties; such No Contact Order shall remain in place until each child reaches the age of eighteen (18) or until modified by this Court.

In the body of the trial court's July 9, 2009, order, the court stated, in part, as follows:

The Court further finds that a full dress hearing was held before a lawyer/referee and that another full dress hearing before the Juvenile Court Judge would be a redundant step since an Appeal can be taken from the Decree to *Circuit Court* for another de novo hearing.

Therefore pursuant to Rule 4 of the Rules of Juvenile Procedure and State v. York (1981) 615 S.W.2d 154, the Court finds the interest of the parties and due process would best be served by proceeding directly to a de novo hearing before the *Fourth Circuit Court of Knox County, Tennessee*.

(Underlining in original; emphasis added.) Despite the two references to circuit court, the order, in its decreeing portion, inexplicably¹ directs “[t]hat the Clerk shall prepare and forward to the *Court of Appeals of Tennessee – Eastern Division, the record for trial de novo in said Court*.” (Emphasis added.) The record was thereafter prepared by the trial court's clerk and transmitted to us as directed by the trial court's order. The pro se appellant followed the path set by the trial court's order and the action of the trial court clerk and filed his brief with us.

We have no jurisdiction in this case. Tenn. Code Ann. § 37-1-159(a) clearly dictates that appeals “from any final order or judgment in . . . dependent and neglect proceeding” are to circuit court, *id.*, and not to the Court of Appeals. A case appealed to the wrong court should not be dismissed by that court. See *In re Estate of White*, 77 S.W.3d 765, 769 (Tenn. Ct. App. 2001). Rather, the court without jurisdiction should simply transfer the case to the correct court, which, in this dependent and neglect case, is circuit court. See Tenn. Code Ann. § 16-4-108(a)(2) (“Any case removed by mistake to the wrong court shall by that court be transferred to the court having jurisdiction of the case, direct.”) and Tenn. R. App. P. 17

¹Our comments should not be read as a criticism of the trial judge. This court recognizes that, more often than not, such orders are drafted for the court's signature by others.

(“If a case is appealed to the Supreme Court, Court of Appeals, or Court of Criminal Appeals that should have been appealed to another court, the case shall be transferred to the proper court.”)

This case is transferred to the Fourth Circuit Court for Knox County for such further proceedings as may be required. Exercising our discretion, we tax the costs on appeal to the Tennessee Department of Children’s Services.

CHARLES D. SUSANO, JR., JUDGE